

ISSUE DATE: May 4, 2000

DOCKET NO. E-115/SA-99-1619

ORDER DETERMINING SERVICE RIGHTS AND NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Freeborn-Mower Cooperative Services to Confirm Customer's Selection of Electric Power Supplier

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PROCEDURAL HISTORY

On November 17, 1999, Freeborn-Mower Cooperative Services (Freeborn-Mower or the co-op) filed a petition asking the Commission to find that it was entitled to provide permanent electric service to a gas compressor station in Freeborn County near Albert Lea. The station's owner, Alliance Pipeline LP, had requested permanent service from the co-op after receiving construction service from Interstate Power Company (Interstate), a subsidiary of Alliant Energy Corporation. The property on which the compressor station was located, as well as the station itself, straddled the boundary line between Interstate's and Freeborn-Mower's service areas.

On January 18, 2000, Interstate Power Company filed comments that opposed permitting the co-op to serve and stated that Interstate had incurred significant costs to bring service to the compressor station.

On January 18, 2000, the Department of Commerce (the Department) filed comments recommending granting permanent service rights to the co-op.

In reply comments Interstate claimed that it was entitled to \$141,500 in compensation, should the co-op receive permanent service rights. The co-op denied that any compensation was due. The Department recommended compensation in the amount of any unrecovered investments Interstate reasonably made to serve the compressor station, but believed the record was incomplete on this issue.

On March 23, 2000, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual and Statutory Background

A. Assigned Service Areas

In 1974 the Minnesota Legislature determined that the orderly development of economical statewide electric service required granting electric utilities exclusive service rights within designated service areas:

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

Minn. Stat. § 216B.37.

The Commission was required to establish assigned service areas for all electric utilities by April 12, 1975 and to prepare official service area maps showing the boundaries of the service areas established. To expedite this process, the statute encouraged utilities to reach agreements on service area boundaries and to submit them to the Commission for approval and ratification. Minn. Stat. § 216B.39, subd. 4. That is how the service area boundaries between these two utilities were set.

B. The Customer

The gas compressor station at issue is located in Freeborn County, near Albert Lea. It is owned by Alliance Pipeline LP, which is building a 1,900 mile high-pressure natural gas transmission pipeline from Fort St. John, British Columbia to Chicago, Illinois. The pipeline crosses the international border in North Dakota and passes diagonally through the lower one-third of Minnesota. The Albert Lea compressor station is one of a series of compressor stations that will serve the pipeline.

The Albert Lea station is located on a 17.2 acre parcel of land that is bisected by the boundary line between the assigned service areas of Freeborn-Mower and Interstate. One of the station's buildings lies directly on the boundary line.

In March of 1999, before construction began, Alliance sent Interstate a letter giving detailed information about the station's electrical requirements and requesting detailed information about Interstate's rates and services. In October 1999 Interstate began serving the construction site. Interstate claims that it believed it was providing permanent service. Alliance, which had signed a contract for permanent service from Freeborn-Mower just a few days earlier, considered the service temporary.

Freeborn-Mower filed a petition with the Commission to establish its right to serve the compressor station under the permanent service agreement.

II. Positions of the Parties

A. Freeborn-Mower

The co-op pointed out that the Public Utilities Act does not state which utility should serve in this situation. The co-op relied on several similar cases in which the Commission had either honored customer choice or had stated it would have honored customer choice but for complicating factors such as pre-existing agreements between utilities or gerrymandering by customers.

The co-op challenged Interstate's \$141,500 compensation claim, saying nearly all of that amount was attributable to a line upgrade planned, begun, and nearly completed before the gas compressor station became a planning factor.

A. Interstate

Interstate argued that it should be granted permanent service rights for two main reasons. First, it claimed that honoring customer choice in these situations is bad public policy, because it encourages "gaming the system." The Commission should instead adopt the "load center" rule, used in Iowa, which grants service rights to the utility in whose service area the customer uses the most electricity. Second, Interstate claimed that even if customer choice were the determining factor, Alliance had first chosen Interstate, not Freeborn-Mower, and should be held to that choice.

Finally, Interstate claimed that it was entitled to some \$141,500 in compensation, should the co-op be allowed to serve.

A. The Department

The Department argued that the facts of this case supported making customer choice the determining factor, pointing to the absence of bad faith, pre-existing utility agreements, or other factors requiring a different analysis. The agency did not consider the "load center" rule more likely to serve the public interest than the customer choice rule and did not recommend adopting it. The Department believed Interstate had failed to prove that the customer had asked it to provide permanent service, and it believed the co-op had proved that it had a contract with the customer to provide permanent service.

The Department considered it probable that most of the \$141,500 Interstate claimed to have spent to bring service to Alliance would have been spent anyway, but it considered the record inadequate to support a final determination.

III. Commission Action

A. Permanent Service Rights to Freeborn-Mower

The Commission agrees with the Department and the co-op that in this case customer choice can and should be the deciding factor in determining service rights. This is consistent with past Commission decisions, sound public policy, and basic fairness for all concerned.

This is a highly unusual case. Even though Minnesota's assigned service areas were speedily drawn to meet tight statutory deadlines, the Commission has faced only a handful of cases in which a customer's property lies in more than one service area. As the co-op pointed out, in these cases the Commission has usually either honored customer choice or stated that it would have honored customer choice but for complicating factors such as pre-existing agreements between utilities or gerrymandering by customers.¹

The Commission continues to believe that this is a sound approach. In the absence of bad faith, pre-existing agreements between utilities, or overarching public interest concerns, the customer's interests should prevail. The purpose of assigned service areas, after all, is to serve the customer's interest in receiving economical, efficient, and adequate electric service.

¹ In the Matter of the Complaint of Minnesota Power & Light Company Against Itasca-Mantrap Electric Cooperative Alleging a Violation of MP&L's Assigned Service Area, Docket No. E-016, E-117/SA-84-578, ORDER DISMISSING COMPLAINT (March 11, 1985); In the Matter of the Request by Wayne and Doris Maier, Owners of Hidden Paradise Resort, to Receive Electric Service from Minnesota Power Company Instead of Crow Wing Cooperative Power and Light Company, Docket No. E-015, E-109/SA-87-669, ORDER DENYING CHANGE IN ASSIGNED SERVICE AREAS AND REQUIRING FILING OF AGREEMENTS ALTERING ASSIGNED SERVICE AREAS (August 9, 1988); In the Matter of the Request by Tim Fisher to Receive Electric Service from Alexandria Light and Power, Docket No. E-138, 203/SA-88-441, ORDER ESTABLISHING SERVICE RIGHTS (October 27, 1988); In the Matter of a Complaint by REM Development, Inc. Against Blue Earth-Nicollet-Faribault County Electric Cooperative Association, Docket No. E-104, 002/SA-88-543, ORDER DENYING COMPLAINT AND DENYING CHANGE IN ASSIGNED SERVICE AREA (February 17, 1989); In the Matter of the Petition of the Kandiyohi Cooperative Electric Power Association Regarding Electric Service to Farm Service Elevator by the Willmar Municipal Utilities Commission, Docket No. E-118, 329/SA-88-379, ORDER REQUIRING COMPENSATION (July 11, 1989); In the Matter of a Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc., Docket No. E-252, 120/C-95-517 (June 14, 1996).

Of course, individual customers' interests are usually appropriately subsumed under the broad public interest factors the Commission balances in making service area determinations, since all customers' interests are served by ensuring that high-quality, economical service is available throughout the state. When these broad public interest determinations leave a customer with two potential providers, however, and the public interest is no longer directly at stake, it is reasonable to defer to the customer's interests, as determined by the customer.

The Commission rejects the claim that the "load center" test represents better public policy than the flexible customer choice analysis the Commission has historically used. The load center test is not only arbitrary, but it would appear to deprive the Commission of the ability to apply public interest or equitable principles in appropriate cases. It would also appear to hold as much potential for manipulating the system as customer choice, since customers could as easily manipulate their load center site as their delivery point. (In dual service area cases, the Commission has historically required that the actual point of delivery be within the serving utility's assigned service area.)

The Commission therefore concludes that this is an appropriate case in which to defer to customer choice in determining service rights.

Finally, the Commission rejects Interstate's claim that Alliance first exercised that choice in favor of Interstate and should be bound by that decision. This issue appears to have been resolved at hearing, with Interstate conceding that due diligence would have disclosed that Alliance had not entered into a permanent service agreement with Interstate. In the interests of clarity, however, the Commission finds that Alliance never chose Interstate as its permanent service provider and that it did choose the co-op.

For all the reasons set forth above, the Commission finds that Freeborn-Mower is entitled to provide permanent service to Alliance's Albert Lea compressor station, as long as the delivery point for that service falls within Freeborn-Mower's assigned service area.

B. Compensation Issues Referred to Hearing

1. The Issue

Although Interstate opposed permitting the co-op to serve the compressor station, its petition asked that any service rights found to exist in the co-op be conditioned on the co-op or the customer reimbursing Interstate for the "costs relating to IPC's temporary service, as well as its efforts to begin providing permanent service, to Alliance. . . ." Interstate estimated those costs at at least \$141,500, broken down as follows:

Temporary Service Expenses	\$ 2,500
Three-Phase Pad-mounted Transformer	\$ 10,000
Cable	\$ 4,000
Three-Phase Line Upgrade	\$125,000

The co-op challenged the claim that these expenses were all recoverable; it claimed that some of

these materials could be returned to the vendor for a refund, minus a 15% to 20% restocking fee. The co-op also challenged the claim that these expenses were all attributable to serving Alliance; it stated that the three-phase line upgrade was approved in 1994 and begun in 1996, long before Interstate knew about the gas compressor station.

The Department stated that it believed most of the \$141,500 represented system improvements that would have been necessary with or without the gas compressor station, but that the record required further development. The agency also believed that some of the costs claimed as compensable should have been recovered in the rates charged for construction service.

The Department recommended awarding Interstate compensation in the amount of any unrecovered investments reasonably made for the purpose of serving Alliance.

2. Commission Action

The Commission agrees with the Department that the record requires further development on the issue of compensation. The Commission will refer that issue to the Office of Administrative Hearings for contested case proceedings.

IV. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. § 216B.37-44.

The Commission finds that it cannot determine, on the basis of the record before it, the amount of reimbursement, if any, due Interstate Power Company for expenses incurred to serve Alliance's gas compressor station. That determination turns on specific facts which are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

V. Issues to be Addressed

The ultimate issue in this case is how much, if any, compensation is due Interstate Power Company for expenses incurred to serve Alliance's gas compressor station. This issue may turn on the reasonableness of claimed expenses and related issues. The parties shall address these and any other relevant issues in the course of contested case proceedings.

VI. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-7609.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100

to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Thomas Bailey, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1427.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

C. Intervention

Current parties to this case are Freeborn-Mower Cooperative Services; Interstate Power Company, a subsidiary of Alliant Energy Corporation; and the Minnesota Department of Commerce.

Other persons wishing to become formal parties to this case shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

All parties and persons intending to intervene should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the scope of the hearing, the locations and dates of hearings, discovery procedures, and similar issues.

VII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to cases involving ratesetting. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Campaign Finance and Public Disclosure Board, telephone number (612) 296-1720, with any questions.

VIII. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission grants the petition of Freeborn-Mower Cooperative Services and finds that Freeborn-Mower is entitled to provide permanent service to the Albert Lea gas compression station of Alliance Pipeline LP.
2. A contested case proceeding shall be held on compensation issues, as set forth above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

In the Matter of the Petition of Freeborn-
Mower Cooperative Services to Confirm
Customer's Selection of Electric Power
Supplier

MPUC Docket No. E-115/M-99-1619

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge:

Allan W. Klein, Office of Administrative Hearings, Suite 1700, 100 Washington Square,
Minneapolis, Minnesota 55401-2138; (612) 349-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____